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# REVIVER STATUTES

## A First Hand Experience

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### Introductions

- McKenzie Nix – SAM Prevention Specialist
- Jens Jensen – Property Casualty Claims Manager



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### Reviver Statutes

- What is a Reviver Statute?

A statute enacted to allow lawsuits to be filed that would otherwise be time barred.



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## Reviver Statutes

- Frequently used to allow victims of sexual abuse to potentially receive a remedy for claims of abuse from the past.



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## Reviver Statutes

- One of the newsworthy examples:
- New York, 2019
- Child Victims Act
- Allowed a one year window
- Which extended to a two year window.



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## Reviver Statutes

- Looks like the Window is now closed
- 11,000 lawsuits



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## Reviver Statutes

- Oregon Doesn't Have One – Yet.
- Any Questions?
- Thank You!



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## Reviver Statutes

- While we don't have an actual Reviver Statute...
- We do have precedence that allows for SAM cases to be brought.



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## Reviver Statutes

- How did we get to where we are at?
- A brief history:



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**Reviver Statutes**

- Oregon Tort Claims Act.
- Originally:
  - Notice: 180 days / 270 for Minors
  - 2 year statute of limitations
  - For Everyone



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**Reviver Statutes**

- Oregon Tort Claims Act.
- Originally:
  - \$200,000 per claimant



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**Reviver Statutes**

- These statutes have stood up to litigation tests, until a newer damages theory came along.



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## Reviver Statutes

- Often times, the challenge to the statute has been based on the state's Constitution.



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## Reviver Statutes

- Oregon's Constitution provides for a remedy.



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## Reviver Statutes

- Early test:
- Clarke V OHSU 2007



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## Reviver Statutes

- Called into question the constitutionality of Oregon Tort Claims Act.



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## Reviver Statutes

- Defense offered up the \$200,000
- Plaintiff said “No Thanks”



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## Reviver Statutes

- Verdict was \$17 million.
- Defense asked Court to reduce back to cap.



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### Reviver Statutes

- Plaintiff said \$200k wasn't an appropriate remedy...
- Court agrees.



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### Reviver Statutes

- The case was ultimately settled, but legislators had to address the issue.



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### Reviver Statutes

- Leads to our current Tort Cap determinations.
- Similar to Colorado
- Current single cap of \$782,600



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### Reviver Statutes

- Increase every year is determined by a consumer price index method.



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### Reviver Statutes

- A long tangent to bring us back to Reviver Statutes.



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### Reviver Statutes

- So, while we don't have a reviver statute, recent court decisions serve essentially the same purpose
- The concept of remedy was applied in a new direction:



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## SAM Cases

- For a long time, we had routinely had SAM cases dismissed under the premise of notice.



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## SAM Cases

- Oregon Law had previously tolled any minor's claims.
- Even those against public entities.
- Tolled for one year after the minor turns 18.
- Or five years from the date of injury. Whichever comes first.



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## SAM Cases

- Special Statute of Limitations For SAM cases.
- Most likely applies to Public Entities
  - Any time before they turn 40
  - Within five years of discovering the connection between the abuse and the injury
  - No trials have specifically addressed this.
  - Supreme Court and Court of Appeals decisions lead us to believe they would find in Plaintiff's favor.



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## SAM Cases

- How do Plaintiffs get around the notice issues even without the Reviver Statute?



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## SAM Cases

- How do Plaintiffs get around the notice issues even without the Reviver Statute?
- Three Ways:



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## SAM Cases

- "I didn't know the touching was inappropriate."
- Plaintiff will argue they were too young at the time to know the touching was inappropriate.



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## SAM Cases

- “I completely forgot about the abuse until adulthood.”
  - A Plaintiff can argue they forgot about the abuse until an event later in life triggered a memory.
  - Recovered Memory Theory.



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## SAM Cases

- “I was in love.”
  - Older Plaintiffs can contend that because they believed they were in love with the abuser, they did not believe the abuse was wrong until later in life, even though they never forgot about the event.



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## SAM Cases

- Case Study: How Plaintiffs avoid Notice requirements even without a Reviver Statute.
  - ZZ V School District



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## Case Example

### – ZZ V School District

- In this matter, a 19 year old brought forth a claim alleging she was abused during her 3<sup>rd</sup> and 4<sup>th</sup> grades.
- Alleged the Principal was the Abuser.
- Odd side bar, her mother brought a claim against the district alleging she was being bullied by a student while in the 3<sup>rd</sup> grade.
- We settled that claim.



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## Case Example

### – ZZ V School District

- The 19 year old alleged the Principal touched her during their "Math Medal" program.
- The principal would call students in to his office and would ask them math questions. As they answered them correctly, the Medal would be moved closer to the student. He also would allegedly move his hand up her leg.



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## Case Example

### – ZZ V School District

- The Principal is then arrested. Makes the news.
- Police can't find enough evidence to charge.



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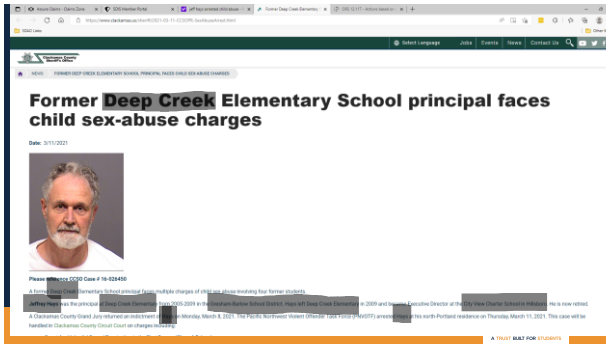
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## Case Example

– ZZ V School District

- Next thing we know, another student sends in a notice of tort claim.
- Another female. Says she saw the arrest story in the news and now recalls she was also abused.
- She lived in the same neighborhood as our original claimant.
- We know the first claimant made contact with her.




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## Case Example

– ZZ V GBSD

- Suit was filed shortly thereafter naming the District.
- By both students.
- They found one of our more well known plaintiff counsels.
- It makes the news.

- Under theory of too young to know touching was inappropriate.




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**Former elementary school principal named in \$20 mil. sex abuse lawsuit**



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## Case Example

- ZZ V School District
  - Suit was filed shortly thereafter naming the District and the principal.
  - And a new Tort Notice
  - This time, a male.
- No apparent connection to the two females.



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## Case Example

- ZZ V School District
  - And then another Tort Notice.
  - Another male.
- He worked with the first male in a warehouse.



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## Case Example

- ZZ V School District
  - Both males said the story showing up in the news.
  - Recovered Memory Theory.



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## Case Example

- ZZ V School District
  - The case carried on and was nearing trial.
  - Basically on the eve of trial, Plaintiff's counsel fired one of the Plaintiffs
  - We settled that claim out.
  - One Plaintiff now went to trial.



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## Case Example

- ZZ V School District
  - Multnomah County, on of our more liberal venues.
  - Despite inconsistent testimony, jury still provided a verdict.



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**Jury awards woman \$3M in civil suit against former principal, Gresham-Barlow School District**

The plaintiff says former elementary school principal Jeff Hays sexually abused her for two years.



ict.



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**Problems**

Either with a Reviver Statute, or Precedence, here are some troubles you can face.



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**Problems**

Who is going to pay for this?  
Who provided excess or reinsurance at the time these were happening.

PACE was created in 2006.



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## Solution

Insurance Archivist.

We actually had to find one to learn who provided excess for the prior Trust.

And we were able to recover.



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So enough of me talking for a bit.

Here's Mckenzie Nix to talk about some of the tools we are developing to combat SAM cases.



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## SAM Prevention Specialist

- What is SAM?
  - SAM: Sexual Abuse and Molestation
- What I do:
  - Research
  - Education & Training
  - Provide Resources



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## Child sexual abuse is a pervasive societal problem.



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## SAM Statistics: Nationwide

1-in-4 girls and 1-in-6 boys will experience sexual abuse by the age of 18

Pre-COVID: 1-in-5 children who used a computer would be sexually solicited online

~70% of all reported sexual assaults (including assaults on adults) occur to children ages 17 and under

<https://saalk.org/resources/statistics>



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## SAM Statistics: Nationwide (cont.)

20% of child sex abuse survivors are under 8 years old

35-45% of survivors are abused by a family member

Another 55-60% are abused by someone outside the family who they know and trust

11% of educators said they would NOT report a colleague even if they knew they were abusing a child

Average pedophile will commit 117 sex crimes in a lifetime

<https://saalk.org/resources/statistics>



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## SAM Statistics: PACE Data

37% of cases are student-on-student

63% of cases are staff-on-student

90% of staff-on-student cases occurred on campus



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## Schools are MAGNETS for child molesters...*why is this?*

Gain repeated access to children

Exploit opportunities for isolation

Stand behind a reputable organization and role


Rely on denial and lack of knowledge

Call on culture of trust to deflect suspicions

Depend on collegial & organizational loyalty

Count on fear & discomfort to create silence

<https://trails.org/>



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## What can we do?

Force child molesters out!

- Educate staff, parents, students, volunteers, contractors, etc.

Learn

- How to spot a predator
- Fixed vs. Opportunistic abusers
- Recognize Grooming Behaviors
- Understand Risk Factors in students

Follow state and local policies

Utilize approved channels for communicating with students on electronic platforms



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### What can we do? (cont.)

- Avoid unsupervised one-on-one interactions with students
- Walk your buildings
- BELIEVE CHILDREN**
  - Children DO NOT lie about sexual abuse



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### Questions and Discussion



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### Thank You!



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## PACE Contacts

- **Administration**
  - dharvey@pace.osba.org
  - pace@osba.org
  - pacetraining@osba.org
  - 800-578-6722
- **Claims**
  - claims@sdao.com
  - 800-305-1736
- **Pace Legal Services**
  - pacelegal@osba.org
  - 503-485-4800
- **Risk Management**
  - riskmanagement@sdao.com
  - 800-285-5461



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